

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HL, CL, CL, and RL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CRAIG LOBDELL,

Respondent-Appellant,

and

TERESA LOBDELL,

Respondent.

In the Matter of HL, CL, CL, and RL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TERESA M. LOBDELL,

Respondent-Appellant,

and

CRAIG LOBDELL,

Respondent.

Before: Whitbeck, C.J., and White and Donofrio, JJ.

UNPUBLISHED

May 27, 2003

No. 244248

Kent Circuit Court

Family Division

LC No. 88-111100-NA

No. 244256

Kent Circuit Court

Family Division

LC No. 88-111100-NA

PER CURIAM.

In these consolidated appeals, respondents Craig and Teresa Lobdell appeal as of right from the trial court order terminating their parental rights to the minor children HL, Charles L, Craig L, and RL under MCL 712A.19b(3)(c)(i) and (g). We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The Lobdell family had a long history of contact with FIA Child Protective Services, beginning in 1988, when a male cousin sexually abused the Lobdell's oldest daughter. This case began in late 1999, when RL was taken to the emergency room on three separate occasions for burns, an assault, and finally for a deep facial laceration. Teresa Lobdell was at bingo on these occasions and had left RL in the care of her older sister and HL. Craig Lobdell was in a drug treatment program at the time, which may have been related to his parole. At a February 7, 2000, hearing, the trial court accepted a no-contest plea and made the children temporary wards of the court. Craig L was not yet born at this time.

RL had initially been removed to her grandmother's care, but was eventually returned to the Lobdells' care. A safety plan was put in action under which the oldest children would receive outpatient treatment, Teresa Lobdell was to be evaluated for a gambling addiction, a psychological evaluation of Teresa Lobdell was requested, and the youngest child was not to be left in the care of anyone unless approved. John Davis, a children's protective services worker, testified that RL was bonded to Teresa Lobdell. He also testified that the older sister, Charles L, and HL were in special education, had impairments, and received SSI payments for this reason. Craig Lobdell was alleged to have been physically abusive to the older sister in 1998 or 1999. Davis also testified that he had concerns about Teresa Lobdell making decisions about the older children, citing a sleepover HL was allowed to attend at which a female child was sexually inappropriate with her.

Susan McConnell, of the Advanced Impact program in which the Lobdells were participating, testified about two home visits she made where the Lobdells did not appear. McConnell testified that Craig Lobdell had been cooperative with the services and that he was an appropriate caregiver. McConnell stated that Craig Lobdell was employed but Teresa Lobdell was not.

By the May 9, 2000, hearing, the older sister had been removed from the home. McConnell recommended the other three children stay with the Lobdells. McConnell stated that Craig Lobdell was again incarcerated for parole violations. McConnell testified that the Lobdells' follow through was marginal. McConnell also testified, however, that the children were appropriately cared for and well taken care of by Teresa Lobdell, that the children were definitely bonded to the Lobdells, and that Teresa Lobdell was not assessed as meeting gambling addiction criteria and was being allowed to attend bingo once a week. However, Davis testified that the home was still in chaos. The trial court continued placement of HL, Charles L and RL in the home and again ordered that Teresa Lobdell complete her psychological evaluation.

For the August 17, 2000, hearing, Craig Lobdell was incarcerated on yet another parole violation. Teresa Lobdell reported that Craig Lobdell had been physically abusive on HL's

birthday. The trial court continued placement of the children and ordered that Craig Lobdell not return to the home when released.

At the November 29, 2000, hearing, Teresa Lobdell's home had no heat, an eviction was pending, and she was staying at her mother's house. In the meantime, Teresa Lobdell had given birth to Craig L, who was not yet a court ward. Kenisha Foreman, the FIA worker, testified that Teresa Lobdell's interaction with the children was entirely appropriate and that they appeared very bonded with her. However, there was a domestic violence incident involving Craig Lobdell against Teresa Lobdell on Thanksgiving and at least one other occasion. Craig Lobdell had apparently also been violent towards Charles L, throwing him into a couch. For Craig Lobdell Foreman requested a no-contact order, as well as a substance abuse assessment, AA, a psychological evaluation, and anger management and domestic violence counseling. The trial court continued placement of the children, without addressing Craig L, and noted that if Teresa Lobdell did not comply, the FIA was authorized to put the children in foster care. The trial court further ordered substance abuse assessment, a psychological evaluation, anger management courses, and AA for Craig Lobdell.

At the February 26, 2001, review hearing, Foreman described Teresa Lobdell's home as very chaotic with a lot of other people and children living there. Foreman referred Teresa Lobdell to Families First for assistance with housing, but Teresa Lobdell was unwilling and Families First withdrew. Foreman also referred Teresa Lobdell to a YWCA program that would assist with housing and domestic violence counseling, but she refused to do that as well. Teresa Lobdell refused to sign releases so that Foreman could get medical information concerning the children. Foreman asked that the children be removed from Teresa Lobdell's care. Foreman also admitted, however, that there had been a breakdown in her relationship with Teresa Lobdell. At the conclusion of the hearing, the trial court removed HL, Charles L, and RL from Teresa Lobdell's care and placed them into foster care. The trial court continued the no-contact order as to Craig Lobdell.

At May 29, 2001, hearing, Angela Scott, the older sister's therapist, discussed Craig Lobdell's substance abuse assessment. According to Scott, Craig Lobdell had alcohol, cocaine, and cannabis dependency but had not received any substance abuse counseling. Teresa Lobdell apparently did not believe that domestic violence counseling was necessary. Teresa Lobdell was taking a parenting class, as was Craig Lobdell. Scott assessed Teresa Lobdell as passive, allowing the older sister to assume the caretaker role. Laura Gearhart, a social work therapist at DA Blodgett Services, testified that HL and Charles L became anxious after visits in which their parents told the children they would be returned to them soon. Gearhart felt domestic violence was a concern and that the children were afraid of it. During visits, Craig Lobdell focused on RL. According to Gearhart, Craig Lobdell had not really progressed on his parent/agency agreement. The trial court continued the children in foster care.

By the August 7, 2001 hearing, Craig Lobdell was again incarcerated, on an uttering and publishing conviction. Mona Norris, a child protective services worker, testified that she had petitioned for removal of Craig L from the home since the other three children were in foster care. Craig L was removed initially, but after a hearing on March 3, 2001, was placed back with Teresa Lobdell. Norris wanted Craig L made a temporary court ward and removed from the home since he was at risk from the same things the other children were. Gearhart testified that the Lobdells had taken some steps on their parent/agency agreements. The Lobdells had

completed their parenting classes; they had not, however, made the necessary changes to provide care for the children. Teresa Lobdell was still playing bingo, approximately fifty-six “cards” per week. Craig Lobdell had gone through substance abuse treatment. Teresa Lobdell had not sought domestic violence counseling despite being repeatedly urged to do so. The children had been expected over a long period of time to parent the younger children, and this continued on visits. Gearhart believed there was a chance Craig L could be hurt when Teresa Lobdell was away, and felt that Teresa Lobdell continued to make poor choices. Therefore, she believed that Craig L should be removed. The trial court did not remove Craig L, but gave Teresa Lobdell “about three weeks to get her act together.”

At the September 4, 2001, hearing, it was reported that the older children, rather than Teresa Lobdell, were still parenting the younger children during visits. Teresa Lobdell was still receiving some SSI benefits for the children, even though they did not live with her, and she was not looking for a job. Bob Lang, filling in for Gearhart, noted that Teresa Lobdell had made some progress, although housing and domestic violence counseling remained concerns, and recommended the return of HL, Charles L, and RL as part of a dual order. He stated that Teresa Lobdell had benefited from parenting classes. However, the trial court continued the placements of the children.

Before a December 6, 2001 hearing, the FIA filed a petition to terminate the Lobdells’ parental rights. The termination hearing began on March 12, 2002. Gearhart summarized the case history, services, and the parent/agency agreements. She testified that the Lobdells told her they at least initially believed all they had to do was take parenting classes to have the children returned. According to Gearhart, Craig Lobdell did not “engage” the children during visits. He refused to participate in domestic violence counseling and substance abuse treatment. His earliest out date for his incarceration was September 2003. His maximum release date was January 2038. Gearhart believed there was only a slim chance he would receive parole by the earliest out date because he had three felony convictions. Gearhart recommended terminating Craig Lobdell’s parental rights.

Gearhart testified that Teresa Lobdell told her she was submitting job applications, but Gearhart was unable to confirm those efforts. Gearhart felt that Teresa Lobdell was making only minimal progress on her treatment plan. However, Teresa Lobdell apparently completed some sort of domestic violence counseling with someone from the YWCA. Gearhart believed that Teresa Lobdell absorbed some information from parenting classes, but did not apply it during visits nor did she understand the emotional impact of the domestic violence situation on the children. Gearhart believed that Teresa Lobdell needed domestic violence counseling even if Craig Lobdell was not in the picture, because she potentially would have other relationships. According to Gearhart, the conditions leading to adjudication were not rectified and Teresa Lobdell showed no understanding of the issues that led to the children being removed. Gearhart recommended that Teresa Lobdell’s parental rights be terminated, noting that two years of intensive services had been provided, that she continued to make poor choices regarding the children, that two of the children were emotionally impaired, and that all the children deserved stability. According to Gearhart, Teresa Lobdell could not show stability in housing or in finances, and she put too much emotional pressure on the children.

Deb Disler, who replaced Gearhart, also recommended terminating Craig Lobdell’s parental rights. She agreed that there had been some problems between Gearhart and Teresa

Lobdell and felt it was good she had taken over the case. Disler believed that Teresa Lobdell needed to work on her parenting skills. Disler did not believe the issues regarding parenting and domestic violence could be rectified in the near future. According to Disler, Teresa Lobdell only received money from her family to support herself. She was again living with her mother, but not as many people lived there as previously. Disler stated that the home was dirty and that she did not believe it was appropriate for Teresa Lobdell and Craig L. Disler also believed that Teresa Lobdell had not made progress in the areas of housing and finances. Disler recommended termination of Teresa Lobdell's parental rights.

An April 18, 2002, hearing was conducted by the judge rather than a referee on a supplemental petition seeking removal of Craig L. The trial court treated the petition as a petition for emergency removal. Disler testified that Teresa Lobdell's home reeked of cigarette smoke and that she was concerned about the smoke because Craig L had breathing difficulties in the form of frequent upper respiratory infections; for this reason, Disler believed removal was necessary. Disler testified that she had never noticed an improvement in the home's condition on her visits and that Teresa Lobdell was very hostile to her during two visits to the home. According to Disler, on her most recent visit, Teresa Lobdell was not there and Craig L had a cut and bruise in the corner of his eye; Disler was told he had climbed onto a chair and fallen onto the corner of a table. During one visit, Disler noticed an extension cord running along the side of Craig L's crib and she was concerned he could reach it and chew on it. Disler asked that Craig L be removed because she believed he was at risk. She noted, however, that she had not sought to have the other children living in the home removed.

At the conclusion of the hearing, the trial court authorized removal. Thereafter, the termination hearing resumed on July 26, 2002. Judith Snow, Teresa Lobdell's therapist, testified that she did not need domestic violence counseling, she was not a battered woman, and had acted appropriately in response to her husband's violence. Snow believed that Teresa Lobdell could cope with the responsibilities of rearing children by herself and thought she would admit that she initially had made some mistakes in choosing caregivers for her children. Snow testified that Teresa Lobdell was emotionally stable, did not represent any sort of threat or risk to her children, and would continue her relationship with her husband after he was released if he had a decent period of sobriety.

Teresa Lobdell testified, stating that in 1988, Child Protective Services advised her not to work after her child was molested so that she could take care of the child. She said she was looking for work and had submitted sixteen applications but that she had never been offered assistance in finding a job. She confirmed that her husband would not be allowed back or to have contact with the children unless he sought substance abuse treatment, anger management counseling, and "domestic counseling."

At the conclusion of the hearing, the trial court summarized the testimony. The trial court was concerned that much of Snow's testimony was based on Teresa Lobdell's self-reports. The trial court also expressed concern that Teresa Lobdell had at various times chosen noncompliance with the parent/agency agreement. The trial court found that Teresa Lobdell showed denial surrounding the domestic violence issue and had shown little response to intensive services except for a "recent dash" to Snow. The trial court determined that statutory grounds for termination under MCL 712A.19b(3)(c)(i) and (g) existed. The trial court also found

that the best interests of the children would be served through termination. The Lobdells now appeal as of right.

II. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.¹ This Court reviews the trial court's findings of fact for clear error.² A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made.³ Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order the termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests.⁴ The trial court's decision regarding the child's best interests is reviewed for clear error.⁵

III. The Trial Court's Decision

A. Craig Lobdell

We conclude that the trial court did not clearly err in finding that the statutory grounds for termination were established with respect to Craig Lobdell by clear and convincing evidence.⁶ Craig Lobdell failed to participate in substance abuse treatment and domestic violence counseling as ordered by the trial court. He was unable to provide suitable housing for the children. Throughout much of this case, he was incarcerated, unable to provide proper care and custody for the children, and unable to rectify the conditions within a reasonable time.

B. Teresa Lobdell

While Teresa Lobdell did comply with portions of the parent-agency agreement, she never accepted that there had been a domestic violence problem in her household, failed to apply learned parenting skills, and relied too much on her older children to parent the other children. She was not employed, could not financially provide for the children, and did not provide the children with suitable housing. Teresa Lobdell argues that more weight should have been given to the testimony of her therapist on her behalf. However, we recognize the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it⁷ and will not disturb the trial court's ruling based solely on the credibility of a witness. Teresa Lobdell also argues, citing MCL 712A.19b(1), that her parental rights to the youngest child were improperly

¹ *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

² MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

³ *Jackson*, *supra* at 25.

⁴ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

⁵ *Trejo*, *supra* at 356-357.

⁶ MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

⁷ *Miller*, *supra* at 337.

terminated because he was in her custody at the time the termination petition was filed. However, this Court has previously determined that it is not necessary that a child be in foster care before a termination petition can be entertained.⁸

C. Best Interests Of The Children

We conclude that the evidence did not show that termination of the Lobdells' parental rights was clearly not in the children's best interests.⁹ Thus, the trial court did not err in terminating their parental rights.

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio

⁸ *In re Marin*, 198 Mich App 560, 568; 499 NW2d 400 (1993).

⁹ MCL 712A.19b(5); *Trejo*, *supra* at 356-357.